

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Verizon Telephone Companies)	WC Docket No. 02-237
)	
Section 63.71 Application to Discontinue)	
Expanded Interconnection Service Through)	
Physical Collocation)	

**REPLY OF QWEST COMMUNICATIONS CORPORATION TO
THE OPPOSITION OF THE VERIZON TELEPHONE COMPANIES**

Qwest Communications Corporation (“Qwest”) submits this Reply in response to the Opposition of the Verizon Telephone Companies (“Verizon”) of Qwest’s Petition for Clarification (“Petition”) of the decision of the Federal Communications Commission (“Commission” or “FCC”) in the Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation.¹ On November 21, 2003, Qwest filed its Petition urging the Commission to clarify that the following three principles must govern future performance by Verizon:

- Qwest has the right to demand a TELRIC-based rate for DC power and other collocation services in all contracts that incorporate FCC rates for any collocation service into the interconnection agreement.
- Qwest has the contractual right to continue to pay for collocation services at the last posted FCC tariffed rate for all collocation services where the rate from an interstate tariff was incorporated into the interconnection agreement.
- Qwest has the right to file a complaint pursuant to Section 208 of the Communications Act for any charges under the Verizon interstate tariffs incorporated into Qwest’s interconnection agreements, which have been imposed inconsistently with the terms of the tariffs or with the Communications Act or the FCC’s rules.

¹ *Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003) (“Order”).

Verizon's Opposition essentially concedes to Qwest's right to TELRIC-based rates, as well as Qwest's right to file a Section 208 complaint to challenge Verizon's billing practices under its federal tariff.²

Accordingly, this Reply focuses on the continued need for clarification by the Commission on what rates Qwest is required to pay for DC collocation power when its interconnection agreements specifically point to the federally-tariffed rates. It is clear that Verizon's obligations under its negotiated, "binding" interconnection agreements with Qwest are not somehow relieved by withdrawing physical collocation from its federal tariffs. Repeated statements in Verizon's Opposition only further evidence why the Commission should grant Qwest's Petition.

I. QWEST'S PETITION DOES NOT REQUIRE CONTRACT INTERPRETATION

First, Verizon contends that the Commission should deny Qwest's Petition because "[t]his is not a proceeding in which the Commission can interpret Qwest's interconnection agreements."³ No where in Qwest's Petition does Qwest ask the Commission to interpret its interconnection agreements with Verizon. In fact, there is no need for interpretation of the applicable provisions in the interconnection agreement, because those provisions are clear on their face. For instance, the New York interconnection agreement between Verizon and Qwest reads:

The provisions of this Part III [on collocation] shall be applicable only to collocation for intrastate purposes. If [Qwest] requests collocation for interstate purposes, the same shall be governed by applicable FCC tariffs[.]

This provision clearly requires and permits Qwest to purchase collocation for interstate purposes from the federal tariff. Allowing Verizon to withdraw its physical collocation offering from its

² Verizon Opposition at 4.

³ *Id.* at 2.

federal tariffs does not require contract interpretation. The Commission's decision does potentially confuse the issue of what pricing applies to the collocation Qwest purchases for interstate purposes. Qwest's Petition seeks to clarify this point.

II. QWEST'S PETITION DOES NOT INVOLVE A CURRENT DISPUTE

In addition, Verizon insists that the Commission deny Qwest's Petition, because "Qwest should address the dispute through the dispute resolution provisions of those agreements."⁴ However, there is no dispute raised in the scope of Qwest's Petition. Though Qwest has various ongoing disputes with Verizon on its billing practices, including collocation billing, no disputes have arisen to date with regard to the application of the *Order*. To date, Verizon has not even implemented the tariff changes associated with the *Order*.

In contrast, Qwest's Petition assumes that disputes would likely arise from the discrepancy raised by the *Order* -- how to apply the contractual provisions that defer to the federal tariffs for determination of collocation rates, once Verizon has withdrawn its federal collocation tariff. Qwest explained that the basis of its Petition was "the possibility of confusion with regard to" how Verizon intends to implement the *Order*. Various assertions from Verizon's Opposition prove only that Qwest's assumptions will likely be correct.

III. THE COMMISSION SHOULD CLARIFY WHAT IMPACT ITS *ORDER* WAS INTENDED TO HAVE ON THE CONTRACTUAL PROVISIONS THAT DEFER TO THE FEDERAL TARIFFS FOR COLLOCATION RATES

Verizon claims in its Opposition that the Commission has answered the question of how interconnection agreement provisions were intended to be effected by the *Order*. With regard to certain rates, terms and conditions, the Commission stated that "[t]ariffed rates, terms and conditions are not frozen by the existence of an interconnection agreement incorporating their

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Id. at 3.

terms.”⁵ In fact, Qwest agreed in its Petition that parties that incorporate tariff provisions into their interconnection agreements do contemplate that the provisions might change.⁶ However, the current action sanctioned by the *Order* **does not change** the tariff provisions incorporated by referenced into the agreements; it **eliminates** the tariff provisions.

Indeed, the Commission does not address the application of its *Order* to contract provisions that provide for collocation rates, terms and conditions from the federal tariff when the collocation was to be used for interstate purposes. Qwest seeks clarification from the Commission to guide Verizon’s implementation of its *Order* with regard to what rates, terms and conditions apply in lieu of the federal tariff provisions. Qwest makes such request in order to avoid any future disputes or contrary contract interpretations, when Verizon finally implements the *Order*.

IV. VERIZON’S INTENTIONS IN THIS MATTER REMAIN UNCLEAR

In its Opposition, Verizon also asserts its “plans to modify its tariffs by replacing current collocation support services provisions with a reference to Verizon’s state collocation tariffs for those services.”⁷ Based on the record created in this proceeding, Qwest had assumed that Verizon would be withdrawing the physical collocation offerings in its federal tariffs, although Verizon has not yet done so as far as Qwest can determine. This comment by Verizon in its Opposition, however, raises many concerns as to whether Verizon plans to withdraw the services or merely begin referencing the state tariff provisions as part of its federal tariff. Of course, Verizon cannot incorporate by reference state tariff prices into its federal tariff.⁸ Alternatively, Verizon may attempt to adopt and publish the physical collocation provisions from its state

⁵ *Order* ¶ 38.

⁶ Petition at 3.

⁷ Verizon Opposition at 5.

⁸ 47 C.F.R. § 61.74.

tariffs into its federal tariffs. However, this would be inconsistent with the relief, which Verizon requested and received in its Section 214 application. If Verizon does not plan to undertake the actions authorized in the *Order*, the Commission and all parties to this proceeding have squandered considerable time and energy. Assuming that Verizon will implement the relief granted in the *Order*, Qwest requests the clarifications herein, as matters of actual potential controversy meriting the attention of this Commission.

CONCLUSION

Accordingly, Qwest urges the Commission to grant its Petition for Clarification.

Respectfully submitted,

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December 16, 2003

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY OF QWEST COMMUNICATIONS CORPORATION TO THE OPPOSITION OF THE VERIZON TELEPHONE COMPANIES** to be 1) filed with the FCC via its Electronic Comment Filing System, 2) served, via email on Jennifer McKee of the Wireline Competition Bureau, 3) served, via email on the FCC's duplicating contractor Qualex International, Inc., and 4) served, via First Class United States mail, postage prepaid, on the remaining parties listed on the attached service list.

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